

Nos. 22-15529, 22-15532, 22-15534, 22-15535, 22-15536,
22-15537, 22-15626, 22-15627, 22-15628

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

DEFENDERS OF WILDLIFE, et al.,
Plaintiffs/Appellees,

v.

UNITED STATES FISH AND WILDLIFE SERVICE, et al.,
Defendants/Appellants

and

STATE OF UTAH, et al.,
Intervenor Defendants-Appellants.

Appeal from the United States District Court for the Northern District of California
Nos. 4:21-cv-344, 4:21-cv-349, and 4:21-cv-561 (Hon. Jeffrey S. White)

**APPELLANTS' JOINT UNOPPOSED MOTION
FOR EXTENSION OF TIME TO FILE OPENING BRIEFS**

Pursuant to Federal Rule of Appellate Procedure 26(b) and Circuit Rule 31-2.2(b), Appellants respectfully request a 59-day extension of time—until September 13, 2024—to file their opening briefs. Currently, opening briefs are due July 16, 2024. This is Appellants' first request for an extension of time to file their opening briefs. Counsel for Federal Appellants has conferred with the other parties about the government's need for additional time to file its opening brief. Intervenor

Appellants do not oppose and request a commensurate 59-day extension for their opening briefs, to promote an efficient and streamlined briefing process. Plaintiffs-Appellees do not oppose this joint motion.

The Court may grant a motion for an extension of time upon a showing of good cause. Fed. R. App. P. 26(b). “‘Good cause’ is a non-rigorous standard that has been construed broadly across procedural and statutory contexts.” *Ahanchian v. Xenon Pictures, Inc.*, 624 F.3d 1253, 1259 (9th Cir. 2010). The attached declaration of Amelia G. Yowell, Attorney, Appellate Section, Environment and Natural Resources Division, U.S. Department of Justice, explains in detail the circumstances giving rise to Appellants’ good cause for an extension.

Briefly, this extension is necessary to complete the administrative process for determining whether the United States intends to pursue its appeal. *See* 28 C.F.R. § 0.20(b); *see generally* U.S. Attorneys’ Manual, Title 2 (describing internal procedures concerning appeals). The United States cannot pursue an affirmative appeal in this case without authorized approval by the Solicitor General. *See* 28 U.S.C. § 505; 28 C.F.R. § 0.20(a), (b). Seeking this authorization is a complex and lengthy internal process.

Although undersigned counsel has worked diligently to complete the internal authorization process, that process will not be completed by the current July 16, 2024 deadline. An extension of time is necessary to finish these internal deliberations,

and it will ensure thoughtful consideration of whether to appeal, which is desirable as a matter of public policy. *Cf. United States v. Mendoza*, 464 U.S. 154, 161 (1984) (discussing the federal government's unique considerations taken into account by the Solicitor General in deciding whether to pursue further review of adverse decisions).

A shorter extension of time is also not feasible, given undersigned counsel's other pending case commitments and the time needed to allow for review and approval of any opening brief by officials within different federal agencies.

For these reasons and those in the attached declaration, Federal Appellants and Intervenor Appellants respectfully request that the July 16, 2024 deadline for filing opening briefs be extended by 59 days, up to and including September 13, 2024.

DATED: July 8, 2024

DJ # 90-8-6-08427

Respectfully submitted,

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**DECLARATION OF COUNSEL IN SUPPORT OF
UNOPPOSED MOTION FOR EXTENSION OF TIME**

I, Amelia G. Yowell, declare pursuant to 28 U.S.C. § 1746 as follows:

1. I am an attorney in the Appellate Section, Environment and Natural Resources Division, U.S. Department of Justice. I am lead counsel for Federal Appellants in this matter, and I am principally responsible for preparing Federal Appellants' opening brief.
2. Under the current briefing schedule, Appellants' opening briefs are due July 16, 2024. If this motion is granted, opening briefs will be due September 13, 2024.
3. Despite the exercise of diligence, the undersigned counsel for the government is unable to meet the current deadline for filing its opening brief for the following reasons:
 - a. The United States cannot pursue an affirmative appeal in this case without authorized approval by the Solicitor General, a high-level official within the Department of Justice appointed by the President. *See* 28 U.S.C. § 505. In addition to conducting all litigation before the Supreme Court in which the federal government has an interest, the Solicitor General is also responsible for determining whether, and to what extent, the United States will pursue an appeal in every case in

which the federal government receives an adverse judgment in state or federal court. See 28 C.F.R. § 0.20(a), (b). This internal deliberation process requires review and coordination within the Environment and Natural Resources Division and within our client agencies, including the U.S. Department of the Interior. Despite diligent efforts by undersigned counsel, this review and authorization process will not be completed by the current July 16, 2024 deadline for filing opening briefs.

b. Other commitments of undersigned counsel also affect the need to obtain an extension of time in this matter. Counsel is responsible for several other pending matters that have and will continue to require significant time and attention between the date she returned from parental leave in April 2024 and the current deadline for opening briefs in this case, including drafting the government's brief in *Environmental Protection Information Center, et al. v. Van Atta, et al.* (9th Cir Nos. 24-2210, 24-1813), which is currently due August 14, 2024, and evaluating and preparing recommendations regarding the government's position on cross-appeal in that same case.

c. Additional time is also needed because principal drafting of the government's opening brief, if authorized, must occur well in advance of the filing deadline to accommodate review and approval by the Department of the Interior and several components within the Environment and Natural Resources Division at the Department of Justice, as is standard government practice. Many key personnel

involved in this review process will be unavailable on previously scheduled leave in August and thus a shorter extension of time is not feasible. Given these time constraints and the other pressing responsibilities listed above, counsel will not be able to meet the current deadline for filing the opening brief, despite working diligently to meet that deadline.

4. Undersigned counsel has consulted counsel for the other parties. Counsel for Intervenor Appellants do not oppose the extension and join in this motion. A commensurate extension of time for Intervenor Appellants' opening briefs will promote an efficient and streamlined briefing process.

5. Counsel for Appellees stated that they do not oppose this joint motion.

6. Appellants have not sought any previous extension of the deadline for filing opening briefs in this case, and oral argument has not yet been scheduled.

For these reasons, Appellants request that this Court grant a 59-day extension of time to file opening briefs in these appeals, up to and including September 13, 2024.

I declare under penalty of perjury that the above is true and correct.

Executed this 8th day of July, 2024.

Respectfully submitted,

/s/ *Amelia G. Yowell*

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CERTIFICATE OF COMPLIANCE

Appellants' motion complies with Rule 27(d) of the Federal Rules of Appellate Procedure as the motion contains 425 words and the declaration in support contains 605 words according to the count of Microsoft Word and has been prepared in a proportionally-spaced typeface using Times New Roman 14 pt. font.

/s/Amelia G. Yowell
AMELIA G. YOWELL